

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.374 OF 2004

Abaso Tukaram Desai (deceased)
through heirs & legal representatives ..Appellants

Versus

Subrao Chimaji Patil ..Respondent

Mr.S.S.Patwardhan for appellants

CORAM : P.V.KAKADE, J.

DATE : 8TH JUNE, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by 8th Ad-hoc Addl. District Judge, Kolhapur on 12th November, 2003 confirming the judgment and order passed by Civil Judge, Junior Division dated 16th February, 1998 dismissing the suit with costs.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The suit was filed for redemption of mortgage of an agricultural land bearing Gat No.140 (R.S.No.130) situated at village Parkhandale, Tal. Panhala, Dist. Kolhapur on payment of the mortgage money and alternatively for reconveyance of it if it is found that the transaction was one of a sale with a condition to re-purchase, since that the relief was not barred by limitation.

4. The learned trial judge came to the conclusion after hearing both the sides and perusing the evidence on record that the plaintiff had failed to prove that the suit transaction dated 21.3.1969 was one of the mortgage of conditional sale and defendant was held to have proved to sale with a condition to re-purchase and as such the suit came to be dismissed. The appeal was carried to the District Court. The Addl. District Court Judge after hearing both the parties came to the conclusion that the reasoning adopted and findings recorded by the lower court was just, legal and proper

and as such dismissed the appeal. Hence the present appeal.

5. At the outset it may be noted that both the courts below have rightly concluded on the basis of available evidence that the suit transaction was that of sale with a condition to re-purchase and not transaction of mortgage by conditional sale. There is absolutely no substantial question of law involved in this appeal. Both the courts below have appreciated the evidence on record properly and correctly, and therefore, it would brook no interference.

6. In the result the appeal has no merit and stands dismissed.
